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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, Petitioners, against GUS ANGELOS, et al., Respondents.	No. 36
CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, Petitioners, against ELIAS TSAKIRES, et al., Respondents.	No. 37

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR PETITIONERS

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Jurisdiction

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by Act of Dec. 23, 1914, c. 2, 38 Stat. 790; Act of Sept. 6, 1916, c. 448, Sec. 2, 39 Stat. 726; Act of Feb. 17, 1922, c. 54, 42 Stat. 266; Act of Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 937; Act of Jan. 31, 1928, c. 14, Sec. 1, 45 Stat. 54. 28 U. S. C. A., Sec. 344(b).

Review is sought of decisions of the Court of Appeals of the State of New York, the court of last resort of that

state, made January 21, 1943, which affirmed orders of the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, dated April 10, 1942, which affirmed judgments or decrees made by the Supreme Court of the State of New York, County of the Bronx, entered September 20, 1939.

Applications for writs of certiorari were filed in this Court on April 9, 1943, and writs granted by order of this Court dated June 14, 1943.

Review by this Court is sought on the ground that the judgments involved denied to the petitioners a right, privilege or immunity, claimed by them under the Constitution of the United States. The notice of appeal to the Court of Appeals, in each case, contained the following:

> "PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:
> That said judgment and order are violative of the Constitution of the United States, particularly Amendments I, V and XIV thereof, * * *" (fols. 301, 310).

After the decisions of the Court of Appeals, petitioners moved in that court to amend the remittiturs of that court, remitting the cases to the court of original jurisdiction, by specifically reciting that the constitutional question had been raised and necessarily passed upon by the Court of Appeals. The said motions were granted by the Court of Appeals in the following language:

> "Motions to amend the remittiturs granted. Return of remittiturs requested and when returned they will be amended by adding thereto the following: Upon this appeal there was presented and necessarily passed upon a question under the Constitution of the United States, viz: The defendants argued that the injunction granted herein violated the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States. This court held the injunction aforesaid did not violate the rights of freedom of speech and assembly guaranteed by the First and Fourteenth Amendments of the Constitution of the United States" (290 N. Y. 324).

Nature of the Suits and Judgments Sought to be Reviewed

These were suits in equity by persons claiming to be engaged as co-partners in the cafeteria business in the Borough of Bronx, City and State of New York, to enjoin a labor union consisting of employees in the cafeteria industry from picketing the cafeterias claimed to be owned by plaintiffs; and the decrees made by the Supreme Court of the State of New York and affirmed by the Court of Appeals enjoined all picketing. The prohibition is in the following language:

> "ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at * * *, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business."

The Question Presented

The sole question presented is:

"Are the decrees of the Supreme Court of the State of New York, affirmed by the Court of Appeals of that state, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeterias mentioned in the decrees under review in the course of a labor dispute, violative of the rights of the petitioners under the provisions of the Constitution of the United States and the Articles of Amendments thereof, as construed by this Court?"

Background

The passage by the New York Legislature in 1935 of an anti-injunction law modelled after the Norris-LaGuardia Act (C. P. A. Sec. 876-a, Laws of 1935, Ch. 477, in effect April 25, 1935), led to the adoption by some employers of various schemes which, it was hoped, would take their labor difficulties out of the domain of "labor disputes" as defined by that Act. These schemes usually passed muster in the lower courts which, in New York at least, have been more favorable to the granting of injunctions in labor disputes than the appellate courts. Occasionally, these courts would also find, by way of makeweight, that the union involved had resorted to some act of violence or threat of violence, thus making it impossible for the Court of Appeals to pass on the schemes as such, since the New York Court of Appeals is prohibited from reviewing questions of fact,—the finding of violence precluding review. Occasionally, however, these cases have reached the Court of Appeals; and until recently that court has usually been astute to detect these schemes and reasonably certain to discourage them.

One of the consequences of this sort of litigation has been that the attention of the courts has been centered on the question as to whether or not the situation involved a "labor dispute",—with the unfortunate result that when the trial court came to the conclusion that no labor dispute was involved, an injunction usually followed almost as a matter of course, without regard to constitutional or other limitations. The various schemes resorted to in order to create a "no labor dispute" situation is well illustrated in one of the cases which reached the Court of Appeals; and the incidental result referred to above is illustrated in another case which reached the Court of Appeals and also this Court.

In the first of the cases just referred to, a corporation which became involved in a labor dispute brought suit for

an injunction claiming that no labor dispute was involved, because all of its employees were its stockholders. The trial court granted an injunction; but the Court of Appeals reversed, holding that the stockholder character of plaintiff's employees was immaterial to the question of "labor dispute".

Boro Park Market v. *Heller,* 280 N. Y. 481.

Thereupon the corporation was promptly dissolved, and the stockholders became "co-partners". A new suit was then brought by the same individuals, the plaintiffs now claiming immunity because of their character of "co-partners" instead of stockholders; and they again obtained an injunction *pendente lite* at Special Term of the Supreme Court. The Appellate Division reversed the injunction order on the ground that the bona fides of the partnership should have been inquired into by the Special Term, and a trial of that issue was ordered.

Kershnar v. *Heller,* 258 App. Div. 751.

The disregard of constitutional rights resulting from the fact that the courts' attention is centered on the question of construction and application of the state statute is illustrated in a case which ultimately came before this Court at its October, 1941, term,—which case also illustrates the fact that by whatever name these disputes are called they involve very serious problems affecting organized labor. In that case, dealers in bakery products brought suit against a drivers' union praying for an injunction, claiming that because their businesses were "one man" or "family" businesses the dispute with the union was not a "labor dispute". They obtained an injunction at Special Term which was affirmed by the Appellate Division, First Department, without an opinion, but with one justice dissenting in the following memorandum:

> "Upon the facts found herein, the injunction should not have been granted, and the complaint should have

been dismissed. Though plaintiffs had no employees, they were conducting business as part of a widespread system of 'peddling' that seriously menaced the standards sought to be maintained by defendant union. 'Peddling' means an arrangement whereby former drivers for manufacturers are aided in procuring trucks, and go into business distributing the products of the manufacturers. Such peddlers work seven days a week, and longer than union hours. Defendant union consists of drivers in the same industry. It has a vital interest in maintaining employment of its members, shorter hours, and a day of rest in seven. Therefore, a labor dispute was involved, and it was proper and lawful for it to picket in an orderly manner when defendant wished to protest against the action of the peddlers."

Wohl v. *Bakery and Pastry Drivers & Helpers Local 802*, 259 App. Div. 868.

The Court of Appeals, in its turn, affirmed the judgment in a per curiam opinion in which the ground for affirmance is stated as follows:

"The justice at Special Term (Noonan, J.), in granting the injunction, found, as conclusions of law, that a previous order of the court at Special Term (McLaughlin, J.), made in connection with a motion to dismiss the complaint, 'established * * * that a labor dispute was not involved in this action and that section 876-a of the Civil Practice Act (entitled 'Injunctions issued in labor disputes') did not apply'; and that 'the plaintiffs are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor'."

Wohl v. *Bakery and Pastry Drivers & Helpers Local 802*, 284 N. Y. 788, 789.

This Court reversed for constitutional reasons, and its decision will be discussed further below. The serious problem presented to organized labor by the particular device

resorted to by the employer in the present case was pointed out in an opinion rendered in another case decided by the New York Supreme Court, in which the court of first instance disapproved of the scheme and refused the injunction. In that case the Court said:

> "The question of whether a partnership exists may not be determined merely by counting the number of persons in the combination. But when a complicated business, which usually requires helpers, is said to be operated without a single employee, and that each activity from the most menial chore to the executive branch, it is asserted, is cared for exclusively by partners, who say they are content to draw as a reward for their labors (of 12 to 14 hours per day) upon profits calculated to some degree at least upon investment (one with as low as $100 invested), a situation is presented that would breed suspicion even if the story were based upon believable testimony.
>
> I think that the alleged arrangement is a scheme—simple to concoct, in effect seriously destructive—born of a desire to reduce overhead by seeking to avoid an employer's financial responsibilities as required by those statutes that treat with employment of labor, workmen's compensation, unemployment insurance, and more important, to win for this enterprise the Labor Law immunities which surround a 'one man business' (See Thompson v. Boekhout, 273 N. Y. 390).
>
> *Our labor and social legislation—enlightened and human—enacted for the purpose of improving the condition of labor and elevating the standard of living of workers, would be nullified and its hopeful aims aborted if such a palpable evasion of law were to be countenanced.*" (Italics supplied throughout unless otherwise stated.)

Saito v. *Waiters & Waitresses Union, Local No. 2*, 12 N. Y. Supp. (2d) 283.

The Dispute and the Suits

For some years prior to April 14, 1939, Demosthenes Loizides owned and operated a cafeteria at No. 838 East 180th Street, in the Borough of Bronx, New York City, known as "World Cafeteria"; and his brother, Louis Loizides, owned and operated a cafeteria at No. 726 East Tremont Avenue, in the Borough of Bronx, New York City, known as "Cosmo Cafeteria". Demosthenes Loizides employed six workers in his cafeteria, and Louis Loizides employed eight workers.

Some time prior to the 14th day of April, 1939, a representative of petitioner Cafeteria Employees Union, Local 302 (hereinafter referred to as Local 302) approached the Loizides brothers with a request or demand for collective bargaining agreements covering their respective employees. This request or demand was refused, and thereupon petitioner Local 302 commenced picketing of the two cafeterias, putting up a "picket line" consisting of one picket in front of each of the cafeterias.

Thereupon and on April 22, 1939, each of the Loizides brothers allegedly entered into a partnership agreement with his employees; and this was followed by the two "partnerships" bringing, simultaneously, the two suits which resulted in the judgments under review. The two "partnership" agreements were prepared, and the two suits brought by the same attorney,—the "partnership" agreements and the complaints in the suits being in identical language except for difference in the names of the parties and the addresses of the cafeterias. Concededly, the "partnerships" were created in order to permit the suits to be brought,—the purpose of the latter being to enjoin the picketing. Demosthenes Loizides expressly so testified, his testimony being as follows:

> "Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business" (No. 36, fol. 151).

These admissions by the Loizides brothers and their counsel appear in various forms throughout the record, and was assumed to be the fact by the trial court in disposing of the case, as will appear from certain colloquies between court and counsel quoted in the margin.[1]

The Pleadings

The complaint in each case alleges: That the plaintiffs are co-partners and the sole owners of the cafeterias involved. That plaintiffs "do all the work in connection with said cafeteria without any outside assistance". That no

---

[1] "Q. Do you have the books and records of the World Cafeteria here pursuant to the subpoena that was served on you?

The Court: What more do you want? This man said he formed the partnership to avoid paying union dues. What was the answer to that question?

(The following part of the record was read:

'Q. The reason why you formed this partnership was in order to avoid the unionization of your place of business; isn't that right? A. The reason I formed that partnership is because people that work for me did not want it. They did not feel like paying dues to anybody for making a living, and I did not want it, either.

'Q. In other words, the reason you formed the partnership was to avoid a picket line walking up and down in front of your place? A. That is right, because it hurts my business.')

The Court: There is your case, right there.

Mr. Feinberg: We claim it is not a bona fide partnership.

Mr. Delman: I will state to the Court frankly that plaintiffs' case stands or falls—your Honor got the proposition very neatly and quickly—we claim that is exactly what we did, and we have a perfect right to do so under the Court of Appeals decision, as pointed out in my memorandum of law.

Mr. Feinberg: I don't want to argue.

The Court: No, but there is the case, and you have got it where it cannot be controverted; you have got it from the plaintiff, where there is no controversy, and you are going to succeed or fail right there. We are not going into the question of purpose any further.

Mr. Feinberg: I am not going into the question of the purpose any further, but there are facts that were brought out" (No. 36, fols. 149-152).

strike has ever been called at the plaintiffs' place of business, and that there was no labor dispute "between the plaintiffs and any employees". And that the plaintiffs, "as a result of the unlawful practices of the defendants" have suffered and will suffer irreparable damages. The "unlawful practices" are described as follows:

> "That individuals under the control of the defendants have been picketing said plaintiffs' cafeteria, bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that those pickets were previously employed by the plaintiffs."
>
> "That those signs carried by the pickets are untrue and known to the defendants to be untrue, *because* there are no employees at the place of business of the plaintiffs and the plaintiffs are not unfair to organized labor."

The answers, which are identical, deny the material allegations of the complaints, and set up the following by way of affirmative defense:

> "That the enterprise conducted and carried on under the name of * * * is the result of an arrangement, scheme, plan, design, and conspiracy on the part of the plaintiffs, and particularly on the part of the plaintiff * * * Loizides to circumvent the laws of the State of New York by creating a fictitious partnership for the purpose of representing that he employs no help and thereby to gain immunity from the statutes of the State of New York with respect to labor and social legislation, and further, to avoid an employer's financial responsibility as required by the laws of the State of New York, particularly those laws dealing with labor, workmen's compensation and unemployment insurance.
>
> That the plaintiffs herein are not actually co-partners but that the enterprise known as * * * is owned, operated and controlled by the plaintiff * * * Loizides.
>
> That an actual controversy and labor dispute exists between the plaintiff * * * Loizides and the defendant union, and that such controversy and labor dispute is

concerned with, among other things, the question of social and economic conditions in the restaurant industry in the City of New York, including standards of employment and working conditions.

That as the result of a concealed relationship of employer and employee existing between and among the plaintiffs, and as a result of the failure on the part of the plaintiff * * * Loizides to comply with the statutes of the State of New York with respect to employment of labor, and as a result of the fraudulent plans, scheme and design of the plaintiffs, said plaintiffs are enabled to unfairly compete with enterprises of a similar kind and nature and to undermine conditions of labor regulated by the statutes of the State of New York and social and economic conditions and to thereby create chaos and unemployment in the restaurant industry."

The Trials and the Findings

A. The Trials.

At the trials, the attorney for the respondents (plaintiffs in the state courts) did not attempt to dispute the allegations of the answers to the effect that the partnerships alleged in the complaints had been created in the midst of existing labor disputes between the then owners of the cafeterias and the labor union involved, in an attempt to take the matters out of the purview of Section 876-a of the Civil Practice Act. On the contrary, as already stated, that was expressly conceded. It was claimed, however, that plaintiffs had the right to do so, and, having done so, the labor disputes theretofore existing had been effectually terminated, and Section 876-a did not apply. The court sustained that position, and thereupon refused to permit the petitioners (defendants in the State courts) to prove the further allegations of their answers that the partnerships were not *bona fide* and in effect non-existent. However, in the course of the presentation of the case for the plaintiffs, sufficient facts appeared to lead a minority of both the Appellate Division and the Court of Appeals

to hold, in effect, that the partnerships were sham and fraudulent. The undisputed facts as they appeared in the course of the presentation of the respondents' own case were thus summarized by the minority of the Court of Appeals in their dissenting opinion:

> "Plaintiff Loizides owned a restaurant. The other six plaintiffs were his employees. Defendant union tried to negotiate a collective bargaining agreement with owner Loizides. Loizides refused to negotiate. Beyond any doubt there was then and there a labor dispute. The union, believing—and surely not being without good reason for that belief—that it had a settled and absolute right to advertise to the public the grievance it claimed to have, began to picket the restaurant. The 'picket line' consisted of *just one picket*. The Trial Justice has specifically found that the one-man picketing 'was at all times orderly and peaceful', that 'no acts of violence have been threatened or committed by the defendant union,' that 'the picket on the picket line * * * requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations' * * *.
>
> "Owner Loizides, for the express and admitted purpose of removing the one-man picket line from in front of his restaurant, called together his six employees and with them signed a document which made them all his partners. Having thus completely changed the aspect of his enterprise, Loizides, with all his newly-minted partners joined as co-suitors, demanded of the court of equity that defendants be forthwith and forever enjoined from picketing the cafeteria. Section 876-a troubled Loizides not at all. He and his erstwhile workers, he explained to the court, were now co-equals and co-proprietors, and so, he argued, there could not be any 'labor dispute' between the plaintiffs and the defendant union. Any 'labor dispute' there might have been in the pre-partnership days, plaintiff told the court, came to a full and final stop when the six employees, without leaving their posts or doffing their uniforms, assumed the roles of partners. Through such a *device* and on such an argument has the owner of this restaurant secured an injunction which in so many words prohibits any picketing of any kind whatever" (fols. 353-357).

B. The Findings.

The findings made by the trial judge were substantially the same as those proposed by the plaintiffs' attorney, consisting in the main of the allegations of the complaint, plus three findings with respect to the partnership to be noted below, and certain additional findings proposed by the defendants embodying facts as to which there was no dispute. The most significant thing about the findings is that the attorney for the respondents did not propose nor did the court make any finding that the partnership was *bona fide*. The findings as proposed by the attorney for the respondents and found by the court on that subject are as follows:

> "That the partnership formed by the plaintiffs is a valid partnership
>
> That the partnership herein was formed on or about April 22, 1939, and all the plaintiffs signed the partnership agreement.
>
> That a certificate doing business as The World Cafeteria was duly filed by the plaintiffs in the office of the County Clerk of the County of Bronx" (Findings 3, 12, 13; fols. 77, 81-2).

It is clear that the finding first quoted is merely a legal conclusion,—which the court apparently considered followed as a matter of law from the other two findings just quoted. And it is equally clear that the finding with respect to the present ownership of the cafeterias (Finding 2, fol. 77) is similarly a conclusion of law which the court believed flowed from the signing and filing of the papers referred to in Findings 12 and 13. It is also clear that Findings 4 and 5, to the effect that the signs carried by the pickets were "untrue" and "false and misleading", are mere conclusions of law based on the second half of the fifth finding, which in effect says that these signs were "untrue, false and misleading", *"because there are no employees at the place of business of the plaintiffs."*

On that point, the minority of the Court of Appeals said the following:

> "We have not overlooked findings of fact numbered Fourth and Tenth. The first of these charges the

picket with 'bearing false and misleading signs that tend to create the impression that the plaintiffs are unfair to organized labor, and also tend to create the impression in the eyes of the public that these pickets were previously employed by the plaintiffs.' Actually the picketing signs said nothing about a strike or a previous employment; they simply announced (according to plaintiff Loizides): 'This place is unfair to organized labor, please help us'."

At the request of petitioners, the court found, to begin with, that the picketing in question commenced about a week before the signing of the alleged co-partnership agreement. The court then made the following findings:

"That at no time did more than one person picket in front of The World Cafeteria at any time.

That none of the fire insurance policies covering the premises known as The World Cafeteria are in the names of any of the plaintiffs herein with the exception of the plaintiff Demosthenes Loizides.

That the picketing of The World Cafeteria was at all times orderly and peaceful.

That no acts of violence have been threatened or committed by the defendant union.

That the plaintiffs herein carry no workmen's compensation insurance.

That the plaintiffs herein pay no unemployment insurance taxes.

That the picket on the picket line in front of The World Cafeteria requested the public not to patronize said cafeteria since it was unfair to union labor, and made no other statements or representations" (Findings 17, 17A, 18, 19, 20, 22, 23; fols. 84-86).

The Appeals in the State Courts

Petitioners appealed from the decrees to the Appellate Division of the New York Supreme Court, First Judicial Department; the notice of appeal being in the usual form under the New York State procedure, which does not have to state the grounds of appeal. In their briefs, however,

counsel for petitioners raised the federal question along with the questions involved under state law. (See records and briefs, *Angelos* v. *Mesevich*, 264 App. Div. 708; *Tsakires* v. *Mesevich*, 264 App. Div. 708.) The Appellate Division affirmed by a divided court,—two of the five judges dissenting. The majority wrote no opinion. The minority voted to reverse and dismiss the complaint—

> "on the ground that the alleged partnerships among the plaintiffs are not bona fide. The testimony clearly indicates that the relationship of employer and employee continue to exist among these parties" (fols. 311-12, 321).

The petitioners then appealed to the Court of Appeals,—the notice of appeal specifically raising the constitutional question, as shown earlier in this brief. In disposing of the constitutional question adversely to the petitioners the majority of the Court of Appeals said:

> "It has been found by the lower courts that the picketing of The World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. *The defendants had the constitutional right* accurately and truthfully and without violence, force or coercion, *or conduct otherwise unlawful* or oppressive to make their grievances known to the public. *But a citizen is not required to tolerate peaceful picketing* accompanied by untruthful representations, interference with his business *or coercive conduct designed to injure or destroy his business* whether a labor dispute exists or not."

As already pointed out, the statement with respect to "untruthful representations" was clearly unwarranted by the facts in the case as disclosed by the record, and must be assumed to have been used because of the supposed compulsion of some rule of state law, the compulsive effect of which was denied by the minority of the Court. "Coercive conduct" must be taken to refer to the economic effect of peaceful picketing.

The net result of the judgments herein was thus stated by the minority of the Court of Appeals in their dissenting opinion:

> "If the picketing described in those findings, herein quoted verbatim, is unlawful, then picketing has been absolutely and completely outlawed in this State."

POINT I

The Supreme Court will examine the record to ascertain for itself the facts involved in a constitutional problem.

The majority of the New York Court of Appeals seems to have found itself in a difficulty with respect to its power to review findings of the trial court affecting the question of the existence of a labor dispute, which we are frank to confess we do not understand, and which to the minority of that court seemed to be wholly imaginary.[2] We need not go into that here, since this Court is not only free to,

---

[2] It should be noted that there is no claim that petitioners had in any way brought about or contributed to the existence of this difficulty, if it does exist. The absence of any finding as to the existence of the labor dispute before the formation of the "partnership" which loomed so large in the opinion of the majority was not due to any failure of petitioners' counsel to bring out the facts upon which such findings could be based, or to request that such findings be made when the facts appeared in the record, but to the refusal of the trial court to make the findings even though the facts appeared in the record and are undisputed. (See defendants' requests to find, particularly requests 3, 4, 5, at fols. 46-48.) Having made those requests, and the requests having been denied, there was nothing further that petitioners' counsel could do but to take the appeals which they did. There was no necessity under the New York practice for any exception to be taken to the refusal of the trial court to make these findings (C. P. A., Sec. 445). But even so there is actually a finding that the dispute pre-existed the formation of the copartnership, since Finding 16 finds that the picketing commenced on April 15 and Finding 12 finds that the alleged partnership was formed on April 22.

but of necessity must, decide for itself all questions of fact as well as of law which are involved in any problem arising under the United States Constitution. This applies even to questions of state law, notwithstanding the fact that ordinarily, when no constitutional problem is involved, this Court accepts the decisions of the state courts as the state law. Otherwise, an appeal to this Court for the protection of constitutional rights would be futile. This principle of our constitutional law has become settled at a very early date, and has never been questioned since. As was to be expected, the question first arose in connection with the "Impairment of Obligation of Contracts" clause of the Constitution. The first clear pronouncement of the principle was contained in the decision of this Court in the well-known *Piqua Bank Case.*

Piqua Branch Bank v. *Knoop*, 16 How. 369.

The question in that case was whether there was a contract which could be impaired. The state court, construing its own constitution and statutes, held that there was no contract to be impaired, but this Court held that there was such a contract and that it had been impaired. The principle itself is too well settled to require any citation of authority. We shall therefore only quote from a few of the decisions language which shows the amplitude of the principle and the sweep of its application so as to give full protection to the constitutional guarantee involved.

In the comparatively recent case of *Louisiana R. & N. Co.* v. *Behrman* (1914), Mr. Justice (later Chief Justice) Holmes, in delivering the opinion of this Court, said:

> "The defendant in error moves to dismiss, invoking the established rule that, where the state court gives no effect to the subsequent enactment, the jurisdiction of this court does not attach. (Citing cases.) We are of the opinion that the present case is not within this rule. It is equally well settled that, where the state court does give effect to later legislation which operates to impair the obligation of a contract if one exists,

this court is not deprived of jurisdiction because the state court has put its decision upon the ground that the contract was not made, or that it was invalid, or that it has become inoperative. In such a case, this court must determine for itself whether there is an existing contract. *Otherwise*, although it was the aim of the suit and the effect of the judgment to give vitality and operation to the subsequent law, and this court might be of the opinion that there was a valid contract which thereby would be impaired, *it would be powerless to enforce the constitutional guaranty.*"

Louisiana R. & N. Co. v. *Behrman*, 235 U. S. 164, 170.

Twelve years later the principle was thus stated by Mr. Justice Taft in delivering the unanimous opinion of this Court:

"The questions we have here to determine are, first, was there a contract, second, what was its proper construction and effect, and, third, was its obligation impaired by subsequent legislation as enforced by the state court? These questions we must answer independently of the conclusion of that court. Of course, we should give all proper weight to its judgment, *but we cannot perform our duty to enforce the guaranty of the Federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration.* It makes no difference what the answer to them involves, whether it turns on issues of general or purely local law, we cannot surrender the duty to exercise our own judgment."

Appleby v. *New York*, 271 U. S. 364, 379-380.

And in the most recent case dealing with the subject, this Court, speaking through Mr. Justice Roberts, reaffirmed this principle in the following language:

"On such a question, one primarily of state law, we accord respectful consideration and great weight to the views of the State's highest court but, *in order that the constitutional mandate may not become a deal*

> *letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions,* and whether the State has, by later legislation, impaired its obligation."
>
> *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 100.

A fortiori, this Court will determine for itself any question of law or fact the determination of which may become necessary in any inquiry with respect to the constitutional guarantees of the First and Fourteenth Amendments. So, when a conviction in a State court is attacked for failure to comply with the procedural requirements of due process, this Court is not bound by the formal findings of the State courts that the required procedure had been observed, and will examine for itself the question whether the findings are based upon fact, and whether the actual procedure followed was not a mere empty shell without real content.

> *Moore* v. *Dempsey*, 261 U. S. 86.
> *Powell* v. *Alabama*, 287 U. S. 45.
> *Norris* v. *Alabama*, 294 U. S. 587.

And the same is true, of course, in cases involving invasion of the right of free speech and free press, whether the same comes up by way of a conviction in a criminal court for the violation of a city ordinance or by a decree against picketing.

> *Schneider* v. *Irvington*, 308 U. S. 147.
> *Thornhill* v. *Alabama*, 310 U. S. 88.
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287.
> *Murdock* v. *Pennsylvania*, 319 U. S. 105.

In the first of these cases this Court held that—

> "The courts should be astute to examine the effect of legislation which is charged to abridge freedom of speech and of the press."
>
> *Schneider* v. *Irvington*, 308 U. S. 147.

An examination of the opinion in the second case cited will show that this Court applied the rule to itself in exercising its power of reviewing judgments of state courts in matters affecting the constitutional guarantees of freedom of speech and freedom of the press involved in the right to peaceful picketing.

In the third case just cited, which involved the review of a judgment of a state court enjoining picketing, this Court said:

> "That is why this court has the limited power to search the records of the state courts where a claim of constitutionality is effectually made."
>
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 293.

As already stated, the "astuteness" which the courts are required to use in examining decisions of state courts in order to ensure the protection of the constitutional guarantees of freedom of speech and of the press, applies to both questions of law and questions of fact, and the record will therefore be searched by this Court so that the Court may determine for itself whether the facts disclosed by the record justify the application of the legal principles applied by the state court, and a state court may not escape review by this Court by the device of placing the decision on a point of state law. So in the *Thornhill Case*, petitioner had been convicted of the crime of "unlawful intimidation", and it was claimed that because the conviction was of a crime against which the state was clearly entitled to protect its citizens, this Court was precluded from reviewing the facts of the case or inquiring into the effect of the ordinance for the violation of which the petitioner had been convicted. But this Court held that that plea was of no avail, and that—

> "It is imperative that when the effective exercise of the constitutional rights of freedom of speech and of the press is claimed to be abridged, the courts

should weigh the circumstances and appraise the substantiality of the reasons advanced in support of the challenged regulations."

Thornhill v. *Alabama*, 310 U. S. 88.

In the last case cited and the accompanying cases, which involved the distribution of literature by Jehovah's Witnesses, this Court went into the facts in order to determine for itself whether the activities of the petitioners amounted to "sales", as had been determined in the state courts, or to methods of propaganda, as claimed by the petitioners; and when this Court came to the conclusion that the claim of "sales" was insubstantial, even though actually present, when taken in connection with the activities as a whole, it did not hesitate to reverse the decisions of the state courts. Those cases were decided by a divided court, but the division did not relate to the right of this Court to inquire into the true nature of the activities which the state courts had declared to be "sales", but as to the result of such inquiry—i.e., whether the findings of the state courts were justified by the facts as disclosed by the records.

POINT II

The solution of the constitutional problem does not depend upon the existence or non-existence of a labor dispute.

The majority of the New York Court of Appeals centered its attention on the question of existence or non-existence of a labor dispute. But that matter is wholly immaterial from the constitutional point of view; and the only reason we have gone into the subject and intend to refer to it again further below, is to show that there was a real occasion for the exercise of the right of free speech and free press, and that the invasion of those rights

complained of are not merely technical or abstract but real and substantial, affecting important interests of the labor movement in general and of the labor union petitioner herein in particular.

That the right of peaceful picketing is not dependent upon the existence of a labor dispute has been expressly decided by this Court in a number of recent cases.

Milk Wagon Drivers Union v. *Meadowmoor Dairies*, 312 U. S. 287.

A. F. L. v. *Swing*, 312 U. S. 321.

Bakery & Pastry Drivers v. *Wohl*, 315 U. S. 769.

POINT III

The solution of the constitutional problem does not depend upon the motive which impels state action, but upon its effect.

Another principle which must be borne in mind in these discussions is that this Court, in reviewing state action in its relation to constitutional guarantees, cannot take into consideration the motives which animate the state organs in the action under review, but only its effects upon the constitutional right involved. The fact that a state law or a state judicial decision was not passed or made for the purpose of curtailing free speech, but in pursuit of an otherwise legitimate aim, will not save it from condemnation if the actual effect of the law or judicial decision is to curtail or impinge upon the right protected by the Constitution.

> "It is not the motive which caused the enactment of the law which is of account, but the effect of the enactment, impairing the rights resting in the contract."
>
> *Carondelet Canal & Nav. Co.* v. *Louisiana*, 233 U. S. 362, 376.

The fact that the state has the right to regulate its labor relations, or impose restrictions upon economic activities is therefore no excuse or license for the infringement of the rights of freedom of speech and of the press.

POINT IV

The right of free speech and free press cannot be taken away as punishment for past offenses.

Considerable misunderstanding has arisen with respect to the attitude of this Court on the subject of permissive state court action by way of limitation of freedom of speech and freedom of the press in labor disputes, because of some general language used by Mr. Justice Frankfurter in delivering the opinion of this Court in the *Meadowmoor Case*, and even more so because of some general language used by Mr. Justice Jackson in delivering the opinion of this Court in the *Wohl Case*. It is clear that the majority of the New York Court of Appeals saw in some of the expressions used by Mr. Justice Jackson in delivering the opinion of this Court in that latter case, a means of doing what this Court has repeatedly stated state courts may not do,—namely, draw the line of permissive action by parties to a labor dispute so narrowly as to infringe upon constitutional rights. We shall have to come back to this question again in discussing the facts in this case, and their significance in the light of this Court's previous decisions. At this point we merely desire to point out that whatever power a state court may have to curtail the rights of freedom of speech and freedom of the press in the exercise of the right of the state to protect itself against disorder and its citizens against violence, one thing it certainly cannot do,—namely, deprive a person of the freedom of speech and freedom of the press as a *punishment* for past conduct. In speaking for this Court in the *Meadowmoor Case*, Mr. Justice Frankfurter said:

"We have already adverted to the generous scope that must be given to the guaranty of free speech. Especially is this attitude to be observed where, as in labor controversies, the feelings of even the most detached minds may become engaged and a show of violence may make still further demands on calm judgment. It is therefore relevant to remind that the power to deny what otherwise would be lawful picketing derives from the power of the states *to prevent future coercion.* Right to free speech in the future cannot be forfeited because of dissociated acts of past violence. Nor may a state enjoin peaceful picketing merely because it may provoke violence in others."

Milk Wagon Drivers Union v. *Meadowmoor Dairies*, 312 U. S. 287, 296.

We also desire to respectfully call to the attention of the Court that there is a basic distinction between acts of violence and acts of other "unlawful conduct". We need not go into a discussion of this point at any length, since the solution of this particular problem is not necessary to a decision in our case. For, as will be seen further below, no "unlawful" action of *any* kind has been proven in this case. But since the problem is of great importance in our constitutional law, we believe that the matter should be briefly noted here. We therefore desire to point out that the *ratio decidendi* in the *Meadowmoor Case* excludes the application of the rule there applied with respect to any unlawful conduct other than violence. In speaking of the question of violence in its relation to free speech, Mr. Justice Frankfurter, speaking for the Court, said:

"It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. *But utterance in a context of violence can lose its significance as an ap-*

peal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." (Ib. at p. 293.)

The *raison d'etre* for the rule applied by the Court in the case of violence clearly does not apply in the case of other kinds of "unlawful" conduct,—which may be taken care of by modes of legal action other than that of the curtailment of free speech. The case of picketing with allegedly false signs in a labor dispute should therefore be at least no different than the case of ordinary libel, in which it is the settled law that it may not be restrained by injunction. We therefore respectfully submit that the rule in the *Meadowmoor Case* with respect to such *quantitative* violence which may be deemed to *qualitatively* change the nature of the entire dispute should be limited to the special problem of violence and not be extended to "unlawful conduct" generally.

POINT V

The violation of petitioners' rights presents a serious threat to the vital interests of organized labor.

That petitioners were defending legitimate as well as important rights of organized labor is clear and undisputed. It is undisputed that a labor dispute had arisen, both in form and substance, between two employers and the labor union representing the organized workers of the calling in which their employees were engaged. That organizing activities are a legitimate interest of labor unions is now beyond dispute. And, clearly, this interest did not disappear because of the purely legalistic scheme of turning the workers into owners,—even if the operation were a bona fide one, as it clearly was not: Organized labor is not only interested in having all workers organized in labor unions, with all that it implies in legal protection by way of wages,

hours of labor, and conditions of employment, but also in eliminating competition with the already organized workers by the sweating condition which this "ownership" may bring in its train, even if bona fide.

Indeed, the alleged conversion of the former workers into "owners" intensified the dispute, because it actually destroyed certain legal safeguards, the protection of which even unorganized workers enjoy,—safeguards and protection in which the labor union involved was legitimately interested because their breakdown tends to lower the general standard of living of the workers in that industry. That the change from workers to alleged "owners" actually had that effect of breaking down those safeguards and protections was expressly found by the trial court, as shown by the findings quoted above. Clearly, therefore, the labor union involved had a legitimate interest to defend, and therefore the constitutional right to bring the dispute to the attention of the public at large, in an effort to enlist public sympathy on its side, as well as for the purpose of informing the misguided workers themselves as to the real meaning of their new status as alleged "owners".

> "Peaceful picketing,"—said this Court in the *Meadowmoor Case*,—"*is the workingman's means* of communication." (Ib. at p. 293.)

On the other hand, the State of New York had no legitimate interest to assert or defend in invading the constitutional rights of the workers involved. Concededly, there was no violence, and its peace was not disturbed. Nor did the union or its pickets do anything else that was "wrongful" *per se* which might require the stepping in for the protection of its citizens other than those involved in the dispute. It is clear that the organ of the State of New York here involved was attempting to use the prohibition of free speech and free press in order to take sides on behalf of the employer in the economic dispute here involved, so as to carry out what it conceived to be the state's policy with respect to labor disputes. And it is equally clear that

in order to do so, it attempted to turn the exercise of a constitutional right into an allegedly "wrongful" act by means of a strained interpretation of the state statute and of the common law of the state. Neither of these is binding upon this Court, which must itself determine what is right or wrong in connection with the exercise of constitutional rights. The legalistic legerdemain whereby the state court tried to exorcise the "labor dispute" from the situation, although the statute in question specifically provides that a labor dispute exists if the situation had its origin in a labor dispute, need not concern us here. Whether that interpretation was right or wrong as a matter of state law is immaterial here, since this Court has a right to say that no state can make, nor any state organ apply, any law which invades constitutional rights as interpreted by this Court. And this Court has repeatedly stated that peaceful picketing cannot be prohibited, either by state legislation or state judicial decision except under certain exceptional circumstances which are not present here.

Assuming that a state court may by injunction prevent the commission in the future of *any* "wrongful" act, it may do so, under the decisions of this Court, under two conditions only, both of which must concur: First, the "wrongful" act of which the enjoined party must have been guilty in the past must be of a very grave and serious nature. And, second, the "wrongful" act must be so *pervasive of the conduct complained of* that a claim can be reasonably put forward that the wrongful aspect of the act could not be separated from the conduct, and that it would therefore be futile to enjoin merely the wrongful aspect of the conduct while permitting the course of conduct itself to continue.

Such was the situation, the majority of this Court held, in the *Meadowmoor Case*,—the only case in recent years in which this Court affirmed a state court decision prohibiting peaceful picketing. But in affirming that judgment this Court was very careful to clearly set forth the exceptional nature of that case, and to reaffirm the gen-

eral principle contended for by us here. In stating the reasons for the decision in that case, Mr. Justice Frankfurter said:

> "The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded *that the momentum of fear generated by past violence would survive* even though future picketing might be wholly peaceful. So the supreme court of Illinois found. * * * These acts of violence are neither episodic nor isolated."

Nor did the Court leave it at that,—indicating only inferentially the limitations upon state action in dealing with free speech,—but the Court proceeded to specifically point out those limitations, and to make it clear that there was no intention to qualify the principles theretofore announced by this Court. We have already quoted the portion of the opinion of this Court in that case which clearly states that free speech cannot be abridged as a punishment for past offenses, no matter how serious, but that the exception is only made to cover circumstances clearly showing its necessity to prevent the future recurrence of violence. And that was followed by the specific declaration to the effect that—

> "We do not qualify the Thornhill and Carlson decisions. *We reaffirm them.* They involved statutes baldly forbidding all picketing near an employer's place of business. Entanglement with violence was expressly out of those cases. The statutes had to be dealt with on their face, and therefore we struck them down. *Such an unlimited ban on free communication declared as the law of a state by a state court enjoys no greater protection here.*"
>
> *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287, 297.

And this declaration of steadfast adherence to constitutional principles theretofore announced was followed by this Court's decision in the *Swing Case*, in which this

Court reversed a judgment of the same state court, notwithstanding the fact that there had been considerable violence, but no proof that the violence was so enmeshed in the situation as to afford reasonable ground that it would continue if picketing were permitted to go on. In that case, this Court, again speaking through Mr. Justice Frankfurter, took occasion to re-state the importance of the constitutional principle involved, and to warn the state courts against its "mutilation" for light reasons. Said Mr. Justice Frankfurter for the Court:

> "Since the case clearly presents a substantial claim of the right to free discussion and since, as we have frequently indicated, that right is to be guarded with a jealous eye (citing cases), it would be improper to dispose of the case otherwise than on the face of the decree, which is the judgment now under review. * * *
>
> All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' *so as to occasion 'imminent and aggravated danger'*. * * *
>
> Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. *The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute*, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209. *The right of free communication cannot therefore be mutilated* by denying it to workers, in a dispute with an

employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, *deemed by them to be relevant to their interests,* can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's Case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*' Senn v. Tile Layers Protective Union, 301 U. S. 468, 478."

A. F. L. v. *Swing*, 312 U. S. 321, 325-6.

The decision in the *Swing Case* was followed at the following term of this Court by the decision in the *Wohl Case*,—a case which is on all fours with the present case. It will be recalled that in that case, the New York Supreme Court had granted an injunction, which was affirmed by the Court of Appeals, by attempting to draw the circle of economic competition so as to exclude from the concept of a labor dispute a case where the persons who complained of the picketing were "owners" and neither employers nor employees. But this Court held that the fact that plaintiffs were owners and were "the sole persons required to run their business" did not entitle them to an injunction which would prevent the labor-union complained of from carrying its grievance to the public, or from attempting to persuade the "owners" themselves that that status was disadvantageous to them, and that they would be better off if they were just ordinary drivers. In the opinion of this Court, delivered by Mr. Justice Jackson, this Court said:

"The controversy in the trial court centered about the issue as to whether a labor dispute was involved within the meaning of New York statutes. The trial court found itself constrained to hold that no labor dispute was involved and seemed to be of the impression that therefore no constitutional rights were involved. It concluded as a matter of law that the re-

spondents 'are the sole persons required to run their business and therefore they are not subject to picketing by a union or by the defendants who seek to compel them to employ union labor.' * * *

The respondents say that the basis of the decision below was revealed in a subsequent opinion of the Court of Appeals, where it was said with regard to the present case that 'we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week.' * * *

We ourselves can perceive no *substantive evil of such magnitude* as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of *embarrassment in the task of governance;* there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing."

Bakery & Pastry Drivers v. *Wohl*, 315 U. S. 769, 773-775.

We respectfully submit that the decisions of this Court in the three cases just discussed clearly require the reversal of the judgment here under review as inconsistent with the principles therein laid down,—quite apart from the broader considerations stated by a minority of this Court in the *Meadowmoor Case* and in the concurring opinion in the *Wohl Case*. The majority of the judges of the New York Court of Appeals apparently thought that the expression "conduct otherwise unlawful" gave the state courts *carte blanche* to decide for themselves what is "unlawful" in the sense of furnishing an excuse for the invasion of the great constitutional rights, the importance of which this Court has so often solemnly proclaimed. But, clearly, the use of that phrase did not imply any such intention on

the part of this Court, but was used merely because of a reluctance to lay down the rule in such absolute terms as might embarrass the states in the exercise of essential powers in grave situations.

That this Court intended that the exception should only apply to grave situations, and reserved the right to judge for itself as to the gravity of the situation involved in each case is self-evident. As we read the last quoted paragraph in the opinion of this Court, it lays down three propositions:

First: This Court will judge for itself as to the existence of the evil the existence of which is urged as the reason or excuse for the invasion of the fundamental right of free speech.

Second: In order that the existence of an evil may furnish a justification for such an invasion, the evil must be of a "magnitude" *commensurate with the importance* of the right involved.

Third: The nature of the evil to remedy which the exception is primarily, if not exclusively made, is "embarrassment in the task of governance".

We take it that no one will dare suggest that any such situation was presented in this case. Indeed, this case is a much more favorable one to the petitioners than was the situation in the *Wohl Case*. To begin with, there was no question of *bona fides* involved in that case. There was no question that the complainants in that case were genuine peddlers working under an arrangement of an entirely different kind than that of ordinary employees. That arrangement had concededly pre-existed the dispute there involved. Indeed, it was the existence of that condition or arrangement that led to the dispute.

In the case at bar, on the other hand, the "sole ownership" and "no employees" situation was clearly a fraudulent device resorted to for the very purpose of invading this

constitutional right. Even the court that issued the injunction did not find that the partnership was *bona fide*, but merely that it was "valid". But that is a weasel word when used in this connection: The partnership arrangement might very well be valid as among the persons who signed the agreement, and nevertheless be a fraudulent device as against outsiders. Two of the five judges of the Appellate Division were of the opinion that it was such a fraudulent device; and so were three out of the seven judges of the Court of Appeals. There is no necessity, however, to determine that question of fact in order to arrive at a proper decision of the present case. If the union was of the same opinion as the substantial minorities of the two appellate courts, it had the right to present its views of the situation to the public at large, and to enlist its sympathy in its struggle against the adoption by employers of a fraudulent scheme which was apparently becoming popular among employers.

Not that the exercise of the right depended on the fraudulent nature of the arrangement, since the arrangement threatened to undermine the standards of employment in the industry in any event. But it did furnish an additional grievance which the union had a right to carry to the public.

In the next place, in the *Wohl Case*, there was some justification for the claim that it was "oppressive" to require a man who earned only thirty-two dollars a week to pay nine dollars for one day's help to an outsider,—help which he claimed not to need. In our case there is not the slightest suggestion of "oppression". What the union was seeking was to organize the workers involved, so as to assure them of a living wage, working conditions usually enjoyed by union labor, and the protection of the liberal labor and social legislation of the State of New York which they were losing,—possibly without their being aware of it,—by the alleged change of their status from workers to "owners".

And in the third place, there is no element of secondary boycott which was claimed to exist in the *Wohl Case,* because of the picketing or threat to picket not only the persons directly involved in the dispute but their suppliers and customers. The picketing in this case, limited to one picket, was confined to the actual place of business involved in the dispute.

All of which points to the conclusion not only that the decrees here under review were improper, no matter by what standard measured, but that they constituted so wanton an invasion of the constitutional rights involved, that if not reversed by this Court, threatens to undermine the entire fabric of our constitutional law in this field. The minority of the Court of Appeals of the State of New York have certainly not overstated the case when they said:

> "In this small lawsuit, there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts, it has little chance elsewhere."

Indeed, this lawsuit is only "small" when we consider the size of the business establishments and the number of workers immediately involved. It is not at all a small case when we consider the importance of the rule laid down by the New York Court of Appeals in its application to industry as a whole. The rule of law laid down by the New York courts is not limited to small businesses which may be easily converted into "partnerships". The particular device here involved had to be resorted to because of the existence of the state "Norris-LaGuardia" Act. But there are states in which there are no such statutes; and the State of New York is free to repeal this statute at any time. And the New York Court of Appeals has already declared that the existing statute does not apply to cases in which a strike is called for an "objective" which the courts consider "unlawful" or "improper",—which, again, is a matter of state law. If, therefore, the constitutional

guarantees of freedom of speech and freedom of the press cease whenever a state, either by statute or through interpretation of its common law by the courts, declares a certain economic objective "unlawful", then, indeed, there is an end to peaceful picketing in this industry or in any other, in small establishments as well as in large ones.

The intercession of this Court is therefore urgently required.

CONCLUSION

The decrees under review clearly contravene the constitutional guarantees of freedom of speech and freedom of the press, and should be reversed.

Dated: New York, September, 1943.

Respectfully submitted,

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